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Notification No: 558/2024

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Date of Award: 15-04-2024

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Topic of Research: A Critical Appraisal of Maintenance Rights of Muslim Divorced Wife: An empirical Study of Delhi

Findings

Maintenance of wife is one the important aspect of Muslim marriage itself. an obligation of a husband to provide maintenance to his wife and this right arises from the very existence of the marital relationship between them. Traditionally it is the well-established rule of Islamic Sharia law that a woman is entitled to maintenance during the subsistence of the marriage and after divorce for iddat period. But the controversy arises when the issue of providing post-divorce maintenance (maa'ta) beyond iddat period comes as there are differences of opinion among the Islamic Scholars as to allowing post-divorce maintenance (maa'ta) beyond iddat period under Islamic Sharia law. But the judiciary of many countries is allowing such maintenance through judicial activism.

Maintenance refers to allowance or expenditure which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce, under specific circumstances. This responsibility arises from the marital union between the two parties. The right to claim maintenance is given to a wife under both personal laws and the provisions outlined in the Code of Criminal Procedure, 1973. While the personal laws require the existence of matrimonial proceedings for a maintenance application to be made, the Code of Criminal Procedure, 1973 allows a wife to seek maintenance even without such litigation. Maintenance to wife is a lawful right which she can enforce as against her husband. A wife whose marriage was performed in accordance with the Muslim law and who has attained age at which she can render conjugal rights to her husband is entitled to receive maintenance. Obligation to maintain his wife arises out of marriage and it can be claim during subsistence of marriage and even after dissolution of marriage.

A Muslim husband is bound to maintain his wife so long as she is faithful to him and obeys his orders which are reasonable in the eye of law. Maintenance during marriage is not an issue but

controversy and debate starts when wife has been divorced. Maintenance is more than just a legal obligation. It is an integral aspect of a fundamental human right. A person's fundamental human right is inadvertently protected by Section 125 of the Criminal Procedure Code, which aims to avoid vagrancy. The idea of human rights has changed since it first emerged in modern society. Social, economic, and cultural rights are now recognized on par with civil and political rights, which are the conventionally accepted human rights. The family life is obligatory in Islam and celibacy is not preferred. So, Muslim personal law gives special emphasis to family matters like marriage, divorce, maintenance and custody.

After a thorough study on this issue, I have given some observations and suggestions that might help bring about the needed clarity to bring Provisions of maintenance in Muslim law in its true sense and spirit. Based on my hypothesis and survey, there is lack of awareness of basic Islamic knowledge and teaching specially to women regarding personal law. Many due to lack of awareness or half knowledge or wrong interpretation of certain provisions. To overcome these problems learned people of the community must come forward and participate in mass awareness and education campaign in the Muslim society. It can be done by individual as well as collective efforts through various methods and modes.

Many groups or committees could be formed at Muhalla, village or city level consisting learned people having genuine knowledge of religion, law and society. These groups will play an important role by creating awareness and education among youth and if any matrimonial issue comes to them, they will guide them considering the Holy Quran and Sunnah. By these matrimonial disputes and litigation could be minimized and resources of community and country can be saved.

In the matter of post-divorce maintenance of Muslim wife, it would be much better if some mediation and arbitration centers are functioning by community support. And that centers and some fund should be made for the rehabilitation of divorced wife and widows other than Waqf Boards. We should promote very less expensive and easy marriage among the community. It will not be beneficial to only poor and marginalized section of society but to community as whole. Remarriage and widow marriage among the community should also promoted and it should not be seen as stigma.